

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6433

MILTON MORENO,

Petitioner - Appellant,

versus

ALTON BASKERVILLE,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (CA-03-430)

Submitted: April 29, 2004

Decided: May 6, 2004

Before LUTTIG, WILLIAMS, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Milton Moreno, Appellant Pro Se. Stephen R. McCullough, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Milton Moreno seeks to appeal the district court's order dismissing as untimely filed his petition under 28 U.S.C. § 2254 (2000). An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2254 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We have independently reviewed the record and conclude that Moreno has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Accordingly, we deny Moreno's motion to proceed in forma pauperis, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED